

Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGRE-00 AID-05 CEA-01
CEQ-01 CG-00 CIAE-00 COME-00 DLOS-09 DODE-00
DOTE-00 EB-08 EPA-01 ERDA-05 FEAE-00 FMC-01
TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00
NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-05 PRS-01
SP-02 SS-15 USIA-06 /124 W
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R 311529Z AUG 77
FM USMISSION NATO
TO SECSTATE WASHDC 5592
INFO AMEMBASSY BONN
AMEMBASSY OTTAWA
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C O N F I D E N T I A L SECTION 01 OF 02 NATO 08311

E.O. 11652: GDS
TAGS: PLOS, NATO
SUBJECT: LOS: FRG PAPER ON USE OF TERM "PEACEFUL PURPOSES"
IN LOS NEGOTIATIONS

REF: (A) STATE 206381 (NOTAL), (B) NATO 7527 (NOTAL)

1. AT AUGUST 30 MEETING, US REP REVIEWED FULLY US
COMMENTS (REF A) ON THE FRG PAPER (REF B), AND URGED
ALLIES TO SUPPORT OUR INTERPRETATION OF THE TERM
"PEACEFUL PURPOSES" AND OUR ADVOCACY OF THE MILITARY
EXCEPTION TO THE PROVISIONS FOR COMPULSORY SETTLEMENT OF
DISPUTES. US REP ALSO CIRCULATED US COMMENTS TO POLADS.

2. UK REP SAID HIS AUTHORITIES AGREED WITH THE STATEMENT
THE US REPRESENTATIVE TO THE LOS NEGOTIATIONS HAD MADE
ON THIS SUBJECT, AND SAW LITTLE VALUE IN STIRRING UP
DEBATE ON THIS ISSUE. FRG REP SAID HIS AUTHORITIES
DID NOT WISH TO PROMOTE DEBATE IN LOS DISCUSSIONS BUT
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RATHER TO CLARIFY THE ALLIED POSITION ON THIS ISSUE.

3. CANADIAN REP DISTRIBUTED THE FOLLOWING PAPER:
BEGIN TEXT:

- THE CANADIAN AUTHORITIES FIND THEMSELVES TO BE
IN AGREEMENT WITH A NUMBER OF POINTS IN THE PAPER

UNDER REFERENCE, PARTICULARLY PARAGRAPH 4 THEREOF. HOWEVER, WE QUESTION THE UTILITY OF EMBARKING UPON AN ENQUIRY IN THE NATO CONTEXT (OR ELSEWHERE) CONCERNING INTERPRETATION OF THE TERM "PEACEFUL PURPOSES" AS IT IS FOUND IN THE INFORMAL COMPOSITE NEGOTIATING TEXT (ICNT). THIS TERM IS CAPABLE OF VARIED INTERPRETATION AND IT WOULD SEEM TO BE IN NATO'S INTERESTS TO MAINTAIN THE PRESENT AMBIGUITY INHERENT IN THE USE OF THE TERM IN DISCUSSIONS AT THE UN CONFERENCE ON THE LAW OF THE SEA AND LEAVE OPEN THE POSSIBILITY THAT THE TERM COULD BE INTERPRETED AS SUGGESTED IN PARAGRAPH 4 OF THE GERMAN PAPER. THUS, NOTHING IN AN EVENTUAL LOS TREATY INCORPORATING THE TERM SHOULD BE PROHIBITIVE OF CERTAIN "PEACEFUL" MILITARY ACTIVITIES WITH RESPECT TO THE SEABED, THE CONTINENTAL SHELF OR EXCLUSIVE ECONOMIC ZONES. A TACIT UNDERSTANDING AMONG THE CONCERNED STATES OF THE ALLIANCE IS TO AVOID BRINGING THIS ISSUE OUT IN THE OPEN AT THE UN CONFERENCE ON THE LAW OF THE SEA FOR THE VERY REASONS REFERRED TO IN PARAGRAPHS 5 AND 6 OF THE GERMAN PAPER. IN FACT, THE DEBATE AT THE FOURTH SESSION OF THE UN CONFERENCE ON THE LAW OF THE SEA, REFERRED TO IN PARAGRAPH 3 OF THE PAPER, ILLUSTRATES THE DANGERS INHERENT IN RAISING THE QUESTION OF INTERPRETATION OF THE TERM IN THE LAW OF THE SEA CONTEXT.

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- TO SUMMARIZE THEREFORE: (A) CANADA DOES NOT HAVE ANY SPECIFIC INTERPRETATION OF THE TERM "PEACEFUL PURPOSES" BUT CONSIDERS THAT IT IS CAPABLE OF A VARIETY OF MEANINGS AND THAT, CONSISTENT WITH THE PRINCIPLES AND PURPOSES OF THE UN CHARTER, THE TERM IS NOT NECESSARILY RESTRICTIVE OR PROHIBITIVE OF CERTAIN TYPES OF MILITARY ACTIVITY ON THE HIGH SEAS, WITHIN EXCLUSIVE ECONOMIC ZONES OR ON THE CONTINENTAL SHELF, BUT THAT AT PRESENT IT IS DIFFICULT TO BE MORE PRECISE THAN THIS; (B) WHILE THE TERM "PEACEFUL PURPOSES" HAS A LONG HISTORY AT THE UN CONFERENCE ON THE LAW OF THE SEA AND HAS BEEN ENSHRINED IN UNGA RESOLUTION 2340(XX) OF DECEMBER 18, 1967, ESTABLISHING AN AD HOC COMMITTEE ON SEABED, AND IN RESOLUTION 2749(XV) OF DECEMBER 17, 1970, WHICH CONTAINS A DECLARATION OF PRINCIPLES GOVERNING THE SEABED AND THE OCEAN FLOOR, IT DOES NOT APPEAR LIKELY THAT CONCERTED EFFORTS WILL BE MADE TO DEFINE THE TERM IN THE CONTEXT OF A LAW OF THE SEA TREATY. IN ANY EVENT, GIVEN THE ELUSIVE NATURE OF THIS CONCEPT, IT IS DIFFICULT TO ENVISAGE PARTICIPATING

STATES REACHING COMMON AGREEMENT. IN THE EVENT THAT THE MATTER IS RAISED, HOWEVER, CANADA, IN CONCERT WITH ITS NATO ALLIES, WOULD WISH TO ENSURE THAT PRESENT AMBIGUITIES WITH RESPECT TO THE TERM ARE MAINTAINED IN ANY EVENTUAL TREATY.

- PARAGRAPH 1 OF THE GERMAN PAPER STATES THAT THE ICNT CONTAINS FOR THE FIRST TIME THE TERM "PEACEFUL PURPOSES" IN ITS KEY DEFINITION OF THE REGIME OF MARINE SCIENTIFIC RESEARCH (MSR) CONTAINED IN ARTICLE 247. WHILE THIS IS TECHNICALLY CORRECT, THE FORMER SINGLE NEGOTIATING TEXT HAD VIRTUALLY THE SAME EFFECT BY PROVIDING FOR MSR TO BE CONDUCTED

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WITH THE CONSENT OF THE COASTAL STATE PURSUANT TO ARTICLE 60 "IN ACCORDANCE WITH THE PROVISIONS OF THIS CONVENTION" AND BY STIPULATING IN ARTICLE 51 THAT MSR ACTIVITIES SHALL BE CONDUCTED EXCLUSIVELY FOR PEACEFUL PURPOSES IN ACCORDANCE WITH GUIDING PRINCIPLES CONTAINED THEREIN. IN A SIMILAR FASHION, THE GUIDING PRINCIPLES IN ARTICLE 241 WHICH INCLUDE "PEACEFUL PURPOSES" WOULD BE INCORPORATED BY REFERENCE INTO ARTICLE 247 EVEN IF THE TERM HAD NOT BEEN SPECIFICALLY INCLUDED IN THE LATTER ARTICLE.

- AN ADDITIONAL IMPORTANT FACT IS THAT THE PRESENT

VERSION OF ARTICLE 247 WAS CAREFULLY NEGOTIATED
WITHIN A SMALL REPRESENTATIVE GROUP OF STATES AND,
TOGETHER WITH THE NEGOTIATED TEXT ON THE STATUS OF
EXCLUSIVE ECONOMIC ZONES AND THE SETTLEMENT OF
DISPUTES, CONSTITUTES A PACKAGE DEAL WHICH APPEARS
TO BE THE BASIS FOR CONSENSUS, SUPPORTED BY THE
UNITED STATES AND TO A LARGE EXTENT THE USSR, ON
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CERTAIN OUTSTANDING ISSUES AT THE CONFERENCE.

END TEXT. GLITMAN

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